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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: AMBER HOTEL CORPORATION)	Case No. CV 14-00575-VAP
)	USBC Case No. 1:13-BK-11804-AA
DEBTOR,)	ADVERSARY Case No. N/A
<hr/> James J. Little,)	
Appellant,)	ORDER AFFIRMING THE JUDGMENT
v.)	OF THE BANKRUPTCY COURT
Stephen K. Post &)	
Amber Hotel Corporation)	
Appellees.)	
<hr/>)	

Appellant James J. Little moved to disqualify Lewis Landau, Appellee Stephen Post's attorney in the underlying bankruptcy of Post's Amber Hotel Corporation ("Amber"). The bankruptcy court denied Little's motion, and Little appeals. The bankruptcy court's ruling is AFFIRMED.

1 **I. BACKGROUND**

2 It was a spring night in 2008. Frank Martini had his
3 driver bring him to an office in Malibu. He went in.
4 The office looked new; not yet lived-in. Stephen Post
5 met Martini at the office. Post opened a litigation bag
6 and removed one hundred thousand dollars in cash. He
7 gave it to Martini. Martini did not consider the space
8 consumed by that much money, and had no way to carry it
9 home. Martini asked Post for his litigation bag. Post
10 gave it to him. They parted. (ER 23-25.)

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12 At least, that is what Martini testified.
13 Previously, Little defended Martini's interests in
14 litigation against Amber - and Little won a judgment in
15 Martini's favor, including attorney's fees. But before
16 he could collect, Post allegedly paid Martini to settle
17 the case behind Little's back - the litigation bag full
18 of money - and thereby deprived Little of his fee award.
19 (See ER 13, 29-31.) Little sued Amber (and others) for
20 this and won a judgment, but Post threatened to seek
21 bankruptcy protection for Amber unless Little settled for
22 less than the amount he was owed. (ER 13-14.)

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24 Little wanted to know what his options were. In the
25 spring of 2011, working with Jeffrey Helfer, a financial
26 advisor (and also a licensed attorney), Little got in
27 touch with Lewis Landau, a bankruptcy lawyer. (See ER
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1 14.) The depth of the discussions between Little,
2 Helfer, and Landau is a subject of dispute between the
3 parties. For now, it suffices to say that they consisted
4 of an approximately half-hour long telephone call and the
5 exchange of a few terse e-mail messages - attached to one
6 of which was a draft bankruptcy filing given to Little by
7 Amber's counsel, and to another, a copy of a state court
8 judgment against Amber. (See ER 35-40, 94-98, 105-06.)
9 The exchange contained a message from Landau reminding
10 Little and Helfer that Landau had "not yet agreed to take
11 on any responsibility for this matter and you should
12 proceed in whatever manner you deem best unless and until
13 we have entered into a written retention agreement." (ER
14 35.) Little and Landau never executed a retainer
15 agreement, Amber filed for bankruptcy protection in March
16 2013, and Little went elsewhere to find representation
17 for those proceedings.

18
19 That was not, however, the end of Landau's
20 involvement with the Amber bankruptcy: Post retained
21 Landau in May 2013, but Little said nothing of it until
22 November 2013, when he filed a motion to disqualify
23 Post's and Amber's attorneys. (See ER 15, 67.) (Little
24 appeals only the denial of his motion as to Landau.)
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26 In his motion, Little argued that he shared with
27 Landau a significant amount of confidential strategic
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1 information about his position vis-à-vis Amber. (See ER
2 6-8.) Consequently, Little argued, even though Landau
3 disclaimed an attorney-client relationship with him
4 specifically, one nevertheless existed, and California
5 Rule of Professional Conduct 3-310(E) therefore required
6 Landau to obtain Little's informed written consent before
7 undertaking his representation of Post.

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9 Landau responded by attacking the sufficiency of
10 Little's evidence that the two formed an attorney-client
11 relationship, and posited instead that at most they had
12 preliminary discussions about the possibility of Landau
13 representing Little. (See ER 52-54.) Nothing disclosed
14 in those discussions was confidential to Little, Landau
15 argued, and as Little and Landau never agreed on Landau's
16 fees, Landau explicitly disclaimed his representation of
17 Little. Moreover, Landau observed, Little did not
18 complain about his representation of Post until months
19 after Landau undertook it. Little's contention that he
20 was unaware until then of Landau's representation of Post
21 rang hollow, Landau insisted: A few months before filing
22 his motion, Little himself wrote to Landau regarding
23 discovery in the case, and sent the letter to Landau at
24 the same e-mail address by which they corresponded two
25 years earlier. (See ER 71.) Indeed, Landau responded to
26 the letter (see ER 85), and Little received and replied
27 to that response (see ER 89-91).

1 The bankruptcy court was inclined to agree with
2 Landau, and issued a tentative ruling: "Deny the Motion
3 because Little has not satisfactorily shown that he is a
4 former client of Landau's or that confidential
5 information was disclosed during the initial consultation
6 such that a fiduciary relationship was formed." (Ex. 1
7 to Appellee's ER.) After receiving the tentative ruling,
8 the night before the bankruptcy court was to hold a
9 hearing on the matter, Little sought to file a
10 supplemental declaration from Helfer purporting to
11 further bolster his case. The bankruptcy judge refused
12 to review it, and declined Little's offer to present
13 evidence supporting his position in camera. (ER 157-58.)
14 The court then issued an order confirming its tentative
15 ruling. (ER 174-75.) This appeal followed.

16 17 **II. LEGAL STANDARD**

18 The bankruptcy court's decision to disqualify - or,
19 in this case, not to disqualify - counsel is reviewed for
20 an abuse of discretion. Cohn v. Rosenfeld, 733 F.2d 625,
21 631 (9th Cir. 1984). A bankruptcy court abuses its
22 discretion if it fails to identify the correct legal rule
23 to apply to the matter before it (a question reviewed de
24 novo), or if it applies that rule to the facts in a
25 way that is illogical, implausible, or finds no support
26 in inferences that can be drawn from those facts. In re
27 Taylor, 599 F.3d 880, 887-88 (9th Cir. 2010) (citing

1 United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir.
2 2009) (en banc)).

3 4 **III. DISCUSSION**

5 The California Rules of Professional Conduct require
6 an attorney to seek the "informed written consent" of a
7 former client before "accept[ing] employment adverse to
8 the . . . former client where, by reason of
9 representation of the . . . former client," the attorney
10 "has obtained confidential information material to the
11 employment." Cal. Rules of Prof'l Conduct 3-310(E).
12 Failure to comply with this Rule normally results in the
13 disqualification of counsel from representing the latter
14 client in a proceeding adverse to the former. Flatt v.
15 Super. Ct., 9 Cal. 4th 275, 283 (1994); see generally
16 L.B.R. 2090-2(a) (subjecting attorneys appearing before
17 the bankruptcy court to the standards of professional
18 conduct applicable in the district court); L.R. 83-3.1.2
19 (adopting the standards of professional conduct required
20 by members of the State Bar of California as the
21 standards of professional conduct for the district
22 court).

23
24 In this case, it is not clear - to say the least -
25 that Little was ever Landau's client. If Little was
26 Landau's client, then to decide whether to disqualify
27 Landau, the bankruptcy court needed only decide whether
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1 the matter Little consulted Landau about was
2 substantially related to the matter in which Landau
3 represents Post. Flatt, 9 Cal. 4th at 283. If so, the
4 court could also have presumed that in the course of
5 their relationship, Little gave Landau confidential
6 information, and therefore the "disqualification of the
7 attorney's representation of the second client," Post,
8 would have been mandatory. Id.

9
10 Even if Little was not Landau's client, the two may
11 have formed an attorney-client relationship, for Rule 3-
12 310(E)'s purposes, if their discussions "proceed[ed]
13 beyond initial or peripheral contacts." People ex rel.
14 Dep't of Corps. v. Speedee Oil Change Sys., Inc., 20 Cal.
15 4th 1135, 1148 (1999). Whether or not an attorney is
16 officially retained, "[a]n attorney represents a client -
17 for purposes of a conflict of interest analysis - when
18 the attorney knowingly obtains material confidential
19 information from the client and renders legal advice or
20 services as a result." Id.; see also Fiduciary Trust
21 Int'l of Cal. v. Super. Ct., 218 Cal. App. 4th 465, 479
22 (2013) (observing that when the attorney and client's
23 relationship was "peripheral or attenuated," a court will
24 only presume the attorney received confidential
25 information requiring disqualification if he was in a
26 position where he likely would have acquired it.)

1 Little and Landau presented the bankruptcy court with
2 two competing views of their relationship. In one
3 (advanced by Little), the record suggests that Little
4 shared confidential information with Landau such that
5 Landau should be deemed to have represented Little - and
6 therefore disqualified - notwithstanding that they never
7 executed a retention agreement. See, e.g., In re Muscle
8 Improvement, Inc., 437 B.R. 389, 395-97 (Bankr. C.D. Cal.
9 2010) (disqualifying a creditor's counsel, even though
10 the debtors had not retained her officially, when the
11 debtors previously met counsel, paid her a fee, provided
12 her documents, and reviewed their financial condition
13 with her). The other view (advanced by Landau), is of a
14 record devoid of any such suggestion, and reflecting only
15 initial or peripheral contact between the two, in the
16 form of a get-to-know-you telephone conversation and a
17 few spare e-mail messages.

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19 The facts recounted above, depending partially on how
20 one credits their sources, can support either Little's
21 view, or Landau's. But making the choice between one or
22 the other in the first instance was a task for the
23 bankruptcy court, and it is not for this Court to
24 substitute its judgment for the bankruptcy court's. See
25 Cadillac Fairview/California, Inc. v. Dow Chem. Co., 299
26 F.3d 1019, 1026 (9th Cir. 2002) ("We could not substitute
27 our judgment, even if it were different, because our
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1 review is limited to whether the district court abused
2 its discretion"). Instead, this Court is charged
3 only with deciding whether the bankruptcy court's choice
4 was out-of-bounds; that is, whether the choice of
5 Landau's perspective over Little's, on the record before
6 that court, was illogical, implausible, or unsupportable
7 based on inferences drawn from facts in that record. The
8 bankruptcy court's ruling suffers none of those faults,
9 and therefore is affirmed.

10
11 The Court's review would end there, but for two other
12 points of which the Court can dispose quickly. First,
13 Little argues the bankruptcy court erred in declining to
14 consider a late-filed declaration from Jeffrey Helfer,
15 attached to a "supplemental reply," that would have cast
16 the record in a better light for Little. The bankruptcy
17 court's rules regulate the timely filing of replies,
18 L.B.R. 9013-1(g), and a court's enforcement of its local
19 rules is left to its broad discretion, Bias v. Moynihan,
20 508 F.3d 1212, 1223 (9th Cir. 2007). Moreover, as the
21 bankruptcy court declined to consider the late-filed
22 document, so does this Court, which reviews the
23 bankruptcy court's ruling on the record that was before
24 the bankruptcy court. (As this Court will not consider
25 the late-filed document, anyway, it denies Post's Motion
26 (Doc. No. 13) to strike it.) See, e.g., Smith v. U.S.
27 Customs & Border Protection, 741 F.3d 1016, 1020 n.2 (9th

1 Cir. 2014) (declining to consider a claim "that rests on
2 facts and documents that were never before the district
3 court," and denying as moot a motion to strike those
4 documents).

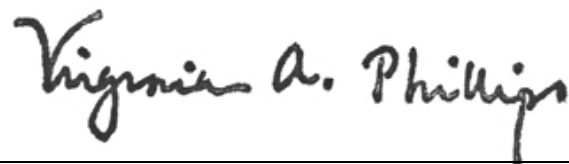
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6 Second, Little argues the bankruptcy court should
7 have allowed him to provide further evidence of his
8 relationship with Landau in camera. Little provides no
9 authority at all to support that argument, which is
10 essentially just a request for an indulgence that, were
11 it to be considered at all, would surely be left to the
12 bankruptcy court's discretion. Cf. Rock River Commc'ns,
13 Inc. v. Universal Music Group, Inc., 745 F.3d 343, 353
14 (9th Cir. 2013) ("[W]e review for abuse of discretion the
15 district court's decision not to conduct an in camera
16 review of the documents" to determine whether they are
17 subject to the attorney-client privilege).

18 19 IV. CONCLUSION

20 The decision to disqualify an attorney is left to the
21 bankruptcy court's discretion. On the record before that
22 court, its decision not to disqualify Landau was not
23 illogical, implausible, or unsupportable. It is,
24 accordingly, AFFIRMED.

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Dated: October 27, 2014



VIRGINIA A. PHILLIPS
United States District Judge